

Convictions

Durr admits that he pled guilty to conspiracy to possess with intent to distribute cocaine base on or about June 5, 1996, in the United States District Court for the Middle District of Alabama. Durr was released from confinement on or about June 24, 2007. Additionally, Durr pled guilty in the Circuit Court of Houston County, Alabama in 1994 for possession of a controlled substance. His sentence in the state circuit court case was ran concurrent with his federal sentence.

Federal Rule of Evidence 609 states as follows:

(a) In General. The following rules apply to attacking a witness's character for truthfulness by evidence of a criminal conviction:

(1) For a crime that, in the convicting jurisdiction, was punishable by death or by imprisonment for more than one year, the evidence:

(A) Must be admitted, subject to Rule 403, in a civil case or in a criminal case in which the witness is not a defendant; and

(B) Must be admitted in a criminal case in which the witness is a defendant, if the probative value of the evidence outweighs its prejudicial effect to that defendant; and

(2) For any crime regardless of the punishment, the evidence must be admitted if the court can readily determine that establishing the elements of the crime required proving—or the witness's admitting—a dishonest act or false statement.

Fed. R. Evid. 609

Federal Rule of Evidence 403 states as follows:

The court may exclude relevant evidence if its probative value is substantially outweighed by a danger of one or more of the following: unfair prejudice, confusing the issues, misleading the jury, undue delay, wasting time, or needlessly presenting cumulative evidence.

Fed. R. Evid. 403.

Rule 403 does not act to exclude any evidence that may be prejudicial, but only evidence the prejudice from which substantively outweighs its probative value. Prejudice within the

meaning of Rule 403 involves identifying a special damage which the law finds impermissible. Charles E. Wagner, Federal Rules of Evidence Case Law Commentary, 145 (1996-97) (footnotes omitted).

a. Nature of the Prior Convictions

Evidence of Durr's criminal convictions is of little probative value, if any. First, none of the prior convictions involved crimes of dishonesty or falsity. Second, the nature of Durr's convictions provide no insight into Durr's propensity to testify truthfully. "Evidence of a prior drug conviction is only minimally probative of a witness' character for truthfulness, if at all." Dover-Hymon v. Southland Corp., 1993 WL 419705, * 6 (E.D. Pa. Sep. 27, 1993).

b. Age of the Convictions

The drug convictions occurred in 1994 and 1996, more than ten (10) years ago. Durr admits that he was released or about June 24, 2007 for said offenses. Even based on the release date, the fact that more than ten (10) years has passed weighs heavily against admittance. Accordingly, the significant age of these convictions argues against admissibility. See Robinson v. Clemons, 1998 WL 151285, at *3 (holding that although age of convictions diminishes its probative value as to veracity, it does not limit its prejudicial effect). This factor, therefore, strongly supports not admitting the prior convictions in this matter. It should be noted that Durr has not been arrested or convicted for any drug offense since 1996.

c. Importance of Credibility

Dealing with the importance of Durr's testimony, weighs against admissibility. Durr will testify and explain the source of the seized currency and why he had said currency in his possession. Durr's testimony will dispute the allegations made by Plaintiff in the complaint.

There is no other means capable to introduce the evidence to be offered through his testimony.

See generally Jack Weinstein & Margaret Berger, Weinstein's Federal Evidence S 609.0 4[2] [a] [v] (Joseph McLaughlin ed., 2d ed. 1997) (explaining that a lack of other potential sources for the defendant's testimony increases the importance of the testimony). Consequently, this factor weighs against admissibility.

Further, the burden of demonstrating that the conviction survives the relevant test imposed by Rule 609 is on the party seeking to introduce the conviction. See, e.g., United States v. Cunningham, 638 F.2d 696, 698 (4th Cir. 1981); United States v. Hendershot, 614 F.2d 648, 652-653 (9th Cir. 1980); United States v. Mahone, 537 F.2d 922, 929 (7th Cir.), cert. denied, 429 U.S. 1025, 97 S.Ct. 646, 50 L.Ed.2d 627 (1976).

Conclusion

All of the factors regarding the probative value of the convictions strongly weigh against admissibility. Evidence of Durr's criminal convictions is highly prejudicial to his case, specifically based on the fact that his testimony is paramount in this matter regarding the currency at issue. As such, all evidence of those convictions should be excluded in their entirety based on the risk of unfair prejudice and confusion of the issues under Rule 403.

Respectfully submitted this the 7th day of May, 2012.

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CERTIFICATE OF SERVICE

I hereby certify that on May7, 2012, I electronically filed the foregoing with Clerk of the Court using CM/ECF system which will send notification of such filing to the following:

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